

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 27959 of 2005(C)

PETITIONERS:

- 1. SUJATHA.C., HEAD D'MAN,
MINOR IRRIGATION CIRCLE,
ERNAKULAM. ASST. EXECUTIVE ENGINEER,
ERNAKULAM.**
- 2. SUJA MATHEW, ASSISTANT DIRECTOR,
HYDROLOGY SECTION, ALUVA.**

**BY ADV. SRI.K.S.MENON
SMT.KAVITHA MENON**

RESPONDENTS: RESPONDENTS.

- 1. GOVERNMENT OF KERALA, TRIVANDRUM,
REPRESENTED BY CHIEF SECRETARY,
KERALA STATE, TRIVANDRUM.**
- 2. THE SECRETARY TO GOVERNMENT,
WATER RESOURCE DEPARTMENT,
KERALA STATE, THIRUVANANTHAPURAM.**
- 3. THE CHIEF ENGINEER,
IRRIGATION AND ADMINISTRATION,
THIRUVANANTHAPURAM.**

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***4. T.K. PRABHAKARAN,
ASST. EXE. ENGINEER,
MVIP SUB DIVISION, NO. 1,
MUTTAM, THODUPUZHA.**

***ADDL. R4 IS IMPEADED AS PER ORDER DATED
03/02/2006 IN IA NO. 14454/2005.**

**BY ADV. DR.K.P.SATHEESAN ADD. R4.
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV
SRI.T.K.KAMALJITH
SMT.C.V.RAJALAKSHMI
GOVERNMENT PLEADER SRI. P. NANDAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 27959/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 29/3/90.

EXT.P2. COPY OF THE GO MS NO. 86/94, DT. 3/10/94.

EXT.P3. COPY OF THE JUDGMENT DT. 25/6/2003.

EXT.P4. COPY OF THE LETTER DT. 5/5/05.

EXT.P5. COPY OF THE ORDER DT. 13/09/2005.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C) No.27959 of 2005-C

Dated this the 1st day of June, 2007

J U D G M E N T

The petitioners are Assistant Engineers in the Irrigation Department. Claiming promotion to the post of Assistant Executive Engineers, they had approached this Court and this Court directed consideration of their representations. Those representations were rejected by Ext.P5 order. So, this writ petition is filed seeking the following reliefs.

“i). Issue a writ of certiorari or other appropriate writ or order or direction quashing Exhibit P5.

ii). Issue a writ of mandamus or other appropriate writ, order, direction to frame new rules or amend the existing rules as stated in Exhibit P3 judgment and considering Exhibit P4 immediately, giving effect to Exhibit P2 to the Irrigation department.”

2. At the time of hearing of the writ petition, the learned counsel for the petitioners pressed the second prayer. But, the direction sought in the second prayer to the Government to frame new rules or to amend the existing rules cannot be granted by this Court. Framing

a rule or amending a rule is a legislative function. So, to exercise that legislative function, this Court cannot issue a writ of mandamus. This position is covered by several decisions of this Court and the Apex Court. The leading decision of the Hon'ble Supreme Court covering this point is AIR 1991 SC

3. As a result of prescription of ratio for promotions to graduates and non-graduates, if a non-graduate junior supersedes a senior graduate, the same may infringe the fundamental rights of the senior graduate, guaranteed under Articles 14 and 16 of the Constitution of India.

4. The learned Government Pleader, submitted that, so far no junior diploma holders have superseded senior graduates. If any of the junior diploma holders supersede the petitioners, in the matter of promotion to the post of Executive Engineer, they can approach this Court. Subject to that right, this Writ Petition is closed.

K.BALAKRISHNAN NAIR, JUDGE.

MS